IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/08/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

C.R.P. (P.D.) No.1556 of 2003

Salem Cooperative Sugar Mills Ltd.,
Mohanur-637 015.
Namakkal District
Rep by its Special Officer .. Petitioner

-Vs-

S.Kuppannan .. Respondent

PRAYER: Against the order dated 21.7.2003 made in I.A.No.531 of 2003 in O.S.No.223 of 2003 on the file of the Sub Court, Namakkal.

!For Petitioner : Mrs.G.Thilakavathi

^For Respondent : Mr.R.Subramanian

:ORDER

The revision petitioner is the defendant in suit O.S.No.223 of 2003 on the file of the Sub Court, Namakkal laid by the respondent/ plaintiff for a bare injunction to restrain the revision petitioner/ defendant from proceeding with the auction notification inviting the tenders for labour contract to run the petrol bunk of the petitioner/ Cooperative Sugar Mill, on the basis that the respondent/plaintiff continues to be an agreement holder for running the petrol bunk of the revision petitioner/ Cooperative Sugar Mill.

2.1. Admittedly, the respondent was appointed as a Labour Contractor to run the petrol bunk of the revision petitioner/ Cooperative Sugar Mill for a period of one year from 1.6.2000 to 31.5.2001 as per the agreement entered into between the petitioner/defendant and the respondent/ plaintiff dated 2.6.2000. The said period of contract came to an end and the revision petitioner/defendant proposed to invite tenders for labour contract to run the petrol bunk of the petitioner/ Cooperative Sugar Mill, by a notice dated 22.4.2001 and the respondent also submitted his tender on 3.5.2001, which clearly shows that his contract period came to an end on 31.5.2001. However, the petitioner/ Cooperative Sugar Mill without proceeding with the said notice came out with a fresh tender notification dated 27.6.2001.

2.2. The respondent challenged the notification dated 27.6.2001 before this Court in W.P.No.13201 of 2001 and obtained an interim stay of further proceedings of the auction notice dated 27.6.2001, pending disposal of the writ petition, which came to be finally dismissed on 25.2.2003 as infructuous taking note of the fact that the term of the respondent's contract already expired on 31.5.2001. Thus, the respondent, concededly, even without valid contract was able to run the petrol bunk from 1.6.2001 to February, 2003, when his writ petition was dismissed by this Court.

2.3. When the revision petitioner/Cooperative Sugar Mill, after the dismissal of the W.P.No.13201 of 2001 invited fresh tenders by notification dated 4.3.2003, published in the Dhina Thanthi, circulated in Namakkal District, the respondent laid O.S.No.223 of 2003 before the Sub Court, Namakkal, as referred to above, and also obtained an order of interim injunction in I.A.No.531 of 2003 on 10.3.2003.

2.4. Aggrieved by the said order of interim injunction dated 10.3.20 03 in I.A.No.531 of 2003, the revision petitioner/cooperative sugar mill had filed C.R.P.No.1104 of 2003, wherein this Court passed the following order in C.M.P.No.7583 of 2003 in C.R.P.No.1104 of 2003 on 23 .6.2003:

"... 2. In the meanwhile, the learned Subordinate Judge, Namakkal is directed to dispose of I.A.No.531 of 2003 filed by the respondent for interim injunction and I.A.No.640 of 2003 filed by the petitioner for vacating the order of injunction granted on 10.3.2003, of course after giving notice to the counsel for both the parties, as the pendency of the above applications has got serious financial implications on the income of the revision petitioner. The learned Subordinate Judge, Namakkal shall take into consideration that the license granted to the respondent expired on 31.5.2001 itself and thereafter, the same was not renewed in the manner known to law; and that a writ petition, viz., W.P.No.13201 of 2001 was also filed by the respondent herein challenging the tender notice dated 27.6.2001 inviting tenders for contract labour for running the petrol bunk in the petition premises and the same was withdrawn by the respondent herein by making an endorsement to the effect that the writ petition had become infructuous as recorded in the order dated 25.3.2003 in W.P.No.13201 of 2001."

2.5. In the order dated 23.6.2003 in C.M.P.No.7583 of 2003 in C.R.P.No.1104 of 2003, this Court directed the learned Subordinate Judge, Namakkal, in clear terms that he shall take into consideration that the licence granted to the respondent therein expired on 31.5.2001 itself and thereafter, the same was not renewed in the manner known to law and directed the learned Subordinate Judge to dispose of the I.A. No.531 of 2003, on merits, in view of the fact that the revision petitioner/Cooperative Sugar Mill have already filed counter in I.A.531 of 2003.

2.6. In spite of the above clear observation of this Court, the learned Subordinate Judge, Namakkal by order dated 21.7.2003 made the order of interim injunction granted on 10.3.2003 in I.A.No.531 of 2003 absolute. Hence, the revision petitioner/ cooperative Sugar Mill has preferred the present revision petition.

3. Mrs.G.Thilakavathi, learned counsel for the revision petitioner again invited the attention of this Court to the serious financial loss caused to the revision petitioner/cooperative sugar Mill as well as to the fact that the respondent/plaintiff has no valid licence to continue to operate the petrol bunk.

4.1. Per contra, Mr.R.Subramanian, learned counsel for the respondent submits that, assuming the petitioner has got any grievance, the petitioner has to prefer an appeal under Order 43 Rule 1 of C.P.C. against the final order dated 21.7.2003 made in I.A.No.531 of 2003 preferred under Order 39 Rules 1 and 4 C.P.C., in this regard, he places reliance on the decision in A.VENKATASUBBIAH NAIDU Vs. S.CHELLAPPAN reported in AIR 2000 SC 3032.

4.2. Mr.R.Subramanian, learned counsel for the respondent, inter alia, contended that the revision petitioner/cooperative sugar mill would not be prejudiced in any manner as the respondent agrees to pay the lease amount continuously pending disposal of the suit and the interest of the petitioner/Cooperative Sugar Mill will, therefore, be protected fully in all respects.

5. I have given careful consideration to the submission of both sides.

6. It is not in dispute that the very relief sought for in the suit is based on the plea as though the respondent has got an existing licence. Even though the relief sought for in the suit appears to be for bare injunction, in effect the plaint proceeds as though the respondent got an existing valid licence in his favour. But, unfortunately, Mr.R.Subramanian, learned counsel for the respondent is not in a position to satisfy this Court as to the existence of the valid licence in his favour as on date.

7. On the other hand, it is not in dispute that the respondent/ plaintiff himself filed a tender on 3.5.2001 pursuant to the tender notification dated 22.4.2001, which was published when the respondent's contract period was about to expire on 31.5.2001. Therefore, undisputedly, the contract period of the petitioner came to an end on 31.5.2001. However, the petitioner/Cooperative Sugar Mill without proceeding with the said notice came out with a fresh tender notification dated 27 .6.2001. Aggrieved by which, the petitioner preferred W.P.No.13201 of 2001 to quash the said tender notification dated 27.6.2001.

8. The very fact that the respondent filed his tender on 3.5.2001 itself makes it clear that his contract period came to an end. Despite this, the respondent had chosen to challenge the tender notification dated 27.6.2001 in W.P.No.13201 of 2001 and obtained an order of interim stay dated 20.7.2001 in W.P.M.P.No.19374 of 2001 pending disposal of the W.P.No.13201 of 2001, which ultimately came to be dismissed on 25.2.2003, on the basis of the endorsement made by the learned counsel for the respondent that the said writ petition has become infructuous, which again shows that the writ petition came to be dismissed in view of the fact that the contract period of the respondent came to an end long back, namely on 31.5.2001.

9. However, when an attempt was made by the petitioner to bring an auction by tender notification dated 4.3.2003, the respondent had moved the civil Court in O.S.No.223 of 2003 before the Sub Court, Namakkal. The above conduct of the respondent, ex facie, makes it clear that he has not come with clean hands. As already mentioned, even before this Court today, the learned counsel for the respondent was not able to satisfy that the respondent has got an existing valid licence in his favour as on date. Even though this fact was observed in the order dated 23.6.2003 in C.M.P.No.7583 of 2003 in C.R.P.No.1104 of 20 03, the learned Subordinate Judge, Namakkal had chosen to make the interim injunction dated 10.3.2003 in I.A.No.531 of 2003 absolute, by order dated 21.7.2003. The non application of mind by the learned Subordinate Judge has landed in miscarriage of justice.

10. It is true, the order dated 21.7.2003 made in I.A.No.531 of 2003 filed under Order 39 Rules 1 and 4 of C.P.C., is appealable, and as laid down by the Apex Court, it may not be proper for this Court to bypass such appeal remedies. But, under the facts and circumstances of the case, when the respondent/defendant failed to come with clean hands and failed to make a prima facie case, suppressing all relevant facts to the Court, and when the learned Subordinate Judge, Namakkal failed to apply the mind to the relevant factors in spite of the observation of this Court dated 23.6.2003 in C.M.P.No.7583 of 2003 in C. R.P.No.1104 of 2003, this Court cannot be a silent spectator and refuse to exercise the power of superintendence available under Article 22 7 of the Constitution of India, which will only amount to permitting the injustice being continued perpetually.

11. Therefore, in order to meet the ends of justice and to avoid miscarriage of justice, particularly when there is a flagrant violation both on merits of the case as well as equity and justice, I am inclined to interfere with the impugned order dated 21.7.2003 made in I.A. No.531 of 2003 and suspend the same forthwith and permit the revision petitioner to proceed with the impugned notification awarding contract to a suitable tenderer. However, I direct the petitioner to prefer an appeal before the Appellate Authority against the order dated 21.7.2003 in I.A.No.531 of 2003 and any confirmation of tender shall be subject to the final orders in the suit O.S.No.223 of 2003 and the appeal.

This revision petition is ordered accordingly. No costs. Consequently, C.M.P.No.11258 of 2003 is closed.

Index :Yes
Internet:Yes

sasi

Note to Registry:

Office is directed to return the original impugned order to the petitioner to enable him to file

an appeal.

To:

The Subordinate Judge
Namakkal
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